

DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

9 ALAN SADHWANI *et al.*,

Civil Case No. 03-00036

10 Plaintiffs,

11 vs.

12 HONGKONG AND SHANGHAI  
BANKING CORPORATION, LTD., *et al.*,

ORDER

13 Defendants.  
14

15 This case came before the Court on September 24, 2004, for a hearing on various pending  
16 motions, including a Motion to Bifurcate Trial (the "Motion") filed by the defendant Hongkong  
17 and Shanghai Banking Corp., Ltd. ("HSBC") on August 20, 2004. Appearing for the Plaintiffs  
18 was Anita P. Arriola, Esq. Attorneys Jacques Bronze and Richard Pipes appeared on behalf of  
19 HSBC. At the conclusion of the hearing, the Court indicated that it was inclined to deny the  
20 Motion and stated that it would be issuing a written decision shortly. For the reasons set forth  
21 herein, the Court hereby DENIES the Motion.

22 **BACKGROUND**

23 For approximately 25 years, the Plaintiffs had an almost exclusive banking relationship  
24 with HSBC. This relationship ended on August 11, 2003, when Mr. Sadhwani received a letter  
25 informing him that HSBC had sold the Loan to Paradise Marine Corporation. See Exhibit O to  
26 Complaint.<sup>1</sup>

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28 <sup>1</sup> A copy of the Complaint is attached as Exhibit B to the Notice of Removal of Action, Docket No. 1  
(November 5, 2003).

1 On October 21, 2003, the Plaintiffs commenced suit against HSBC in the Superior Court  
2 of Guam. The Complaint alleged six (6) causes of action.<sup>2</sup> On November 5, 2003, HSBC  
3 removed the action to this Court based on diversity jurisdiction.

4 Subsequently, the Plaintiffs filed amended complaints. On April 27, 2004, the Plaintiffs  
5 filed a First Amended Complaint after Judge Unpingco dismissed counts 4 and 6 of the  
6 Complaint without prejudice. On May 28, 2004, Judge Pregerson granted HSBC's motion to  
7 strike the First Amended Complaint in its entirety, but permitted the Plaintiffs to amend their  
8 complaint. Thus, on June 2, 2004, the Plaintiffs filed a Second Amended Complaint. Finally,  
9 pursuant to a stipulation<sup>3</sup> between the parties, the Plaintiffs filed a Third Amended Complaint<sup>4</sup> on  
10 August 16, 2004.

11 Presently, the trial in this matter is scheduled to commence on January 25, 2005.

12 On August 20, 2004, HSBC filed the instant Motion. See Docket Nos. 246 and 247.<sup>5</sup>  
13 Therein, HSBC requested that the trial in this case be bifurcated into two (2) separate phases.

14  
15 <sup>2</sup> The Complaint alleged the following causes of action:

- 16 1. Breach of Covenant of Good Faith and Fair Dealing;
- 17 2. Intentional Misrepresentation;
- 18 3. Breach of Contract: Promissory Note Modification Agreement;
- 19 4. Breach of Contract: Work out Agreement;
- 20 5. Breach of Fiduciary Duty; and
- 21 6. Breach of Banking and Confidentiality Laws.

22 <sup>3</sup> See Stipulation and Order, Docket No. 244 (August 18, 2004).

23 <sup>4</sup> The Third Amended Complaint alleged the following causes of action:

- 24 1. Breach of Covenant of Good Faith and Fair Dealing;
- 25 2. Intentional Misrepresentation;
- 26 3. Breach of Contract – Promissory Note and Business Loan Agreement;
- 27 4. Breach of contract – Promissory Note Modification Agreement;
- 28 5. Breach of Contract – Work out Agreement;
6. Breach of Fiduciary Duty;
7. Breach of duty not to Divulge Plaintiffs' Confidential Banking Information; and
8. Punitive Damages.

On October 1, 2004, this case came before Judge David C. Bury for a hearing on HSBC's Motion to Dismiss Plaintiffs' First, Third, Fourth, Sixth, and Seventh Causes of Action. Judge Bury subsequently dismissed the Plaintiffs' third cause of action on the Third Amended Complaint. See Order, Docket No. 307 (October 4, 2004).

<sup>5</sup> Docket No. 247 is the HSBC's Memorandum of Points and Authorities in Support of Motion to Bifurcate Trial ("HSBC's Mem. Supp. Mot.").

1 The first phase would only include the issues of liability, compensatory damages, and whether  
2 the Plaintiffs are entitled to punitive damages. If the jury determines that the Plaintiffs are  
3 entitled to an award of punitive damages, then the second phase of the trial would be a  
4 determination of the amount of punitive damages to award the Plaintiffs. HSBC proposed that a  
5 single jury hear both phases of the trial, but that the Court preclude from the first phase evidence  
6 relevant only to the amount of punitive damages sought by the Plaintiffs. HSBC asserted that  
7 bifurcation would save time and expense, and would eliminate prejudice to it.

8 On September 8, 2004, the Plaintiffs filed an opposition brief<sup>6</sup> to the Motion, along with  
9 supporting affidavits.<sup>7</sup> The Plaintiffs asserted that a bifurcated trial would not be convenient for  
10 the parties, the jurors, or the Court, nor would it be conducive to expedition or judicial economy.  
11 The Plaintiffs further argued that they would be “severely prejudiced” by bifurcation. Finally,  
12 the Plaintiffs alleged that HSBC would not be prejudiced by the presentation of evidence  
13 regarding its net worth to the jury prior to the determination of punitive damages.

14 On September 15, 2004, HSBC filed a reply brief<sup>8</sup> to the Plaintiffs’ Opposition and  
15 refuted the various arguments raised by the Plaintiffs.

#### 16 ANALYSIS

17 Rule 42(b) of the Federal Rules of Civil Procedure is relevant to the present analysis.  
18 Rule 42, in pertinent part, provides that “[t]he court, in furtherance of convenience or to avoid  
19 prejudice, or when separate trials will be conducive to expedition and economy, *may* order a  
20 separate trial of any claim . . . or issue.” Fed. R. Civ. P. 42(b) (emphasis added). The Court has  
21 broad discretion to order separate trials under this rule. See Danjaq L.L.C. v. Sony Corp., 263  
22 F.3d 942, 961 (9<sup>th</sup> Cir. 2001). The Advisory Committee Notes indicate that “[w]hile separation  
23 of issues for trial is not to be routinely ordered, it is important that it be encouraged where

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25 <sup>6</sup> The opposition brief is docketed as Docket No. 262 and is captioned “Plaintiffs’ Memorandum of Points and  
Authorities in Opposition to Defendant [HSBC’s] Motion to Bifurcate Trial” (the “Pls.’Opp’n”).

26 <sup>7</sup> The Plaintiffs filed a Declaration of Alan Sadhwani (Docket No. 260) and a Declaration of Anita P. Arriola  
27 (Docket Nos. 261 and 263).

28 <sup>8</sup> HSBC’s reply brief, captioned “Reply Memorandum of Points and Authorities in Support of Motion to  
Bifurcate Trial”(the “Reply Br.”) is docketed as Docket No. 273.

1 experience has demonstrated its worth.” Fed. R. Civ. P. 42, Advisory Committee Notes to the  
2 1966 Amendment. The party seeking bifurcation has the burden of establishing that bifurcation  
3 is warranted. Haitian Centers Council, Inc. V. McNary, 144 F.R.D. 191, 192 (E.D.N.Y. 1992)  
4 (*citing* Buscemi v. Pepsico, Inc., 763 F. Supp. 1267, 1271 (S.D.N.Y. 1990)).

5 As HSBC's memorandum notes, courts have frequently ordered that the issues of liability  
6 and damages be tried separately. HSBC contends that in this case evidence as to its financial  
7 condition is irrelevant to the determination of HSBC's liability for the claims asserted by the  
8 Plaintiffs and the computation of any compensatory damages to which the Plaintiffs may be  
9 entitled. HSBC believes that the Plaintiffs will present evidence that it has “vast and unlimited  
10 resources” such that “HSBC can well afford to pay damages to [the] Plaintiffs, even if liability is  
11 not proven.” (HSBC's Mem. Supp. Mot. at 7.) Accordingly, HSBC asserts that bifurcation is  
12 warranted to eliminate “prejudice to HSBC by the fact-finder improperly considering evidence  
13 of HSBC's financial condition when determining issues of liability and compensatory damages.”  
14 (*Id.* at 6.) HSBC further argues that the Court will save time and expense by bifurcating the  
15 trial.<sup>9</sup>

16 The Plaintiffs oppose bifurcation and assert that evidence of HSBC's financial status and  
17 net worth are relevant to the issues to be tried in phase one. The Plaintiffs contend that this  
18 financial information is not only relevant to the issue of punitive damages, but also relevant to  
19 establish HSBC's economic or financial reasons for closing the Guam office and the Plaintiffs'  
20 claim that “HSBC acted in bad faith and failed to deal fairly with [the P]laintiffs when the bank  
21 sold the Loan to PMC at a loss to the bank, for an amount that was less than half the balance of  
22 the Loan.” (Pls.' Opp'n at 6.)

23 HSBC refutes this argument. HSBC asserts that its reason for closing its Guam office are  
24 of no consequence to the determination of the Plaintiffs' claims, and thus the financial  
25 information sought is irrelevant to the issues to be tried in phase one. Additionally, HSBC

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27 <sup>9</sup> HSBC also states that bifurcation would “defer costly discovery pending resolution of preliminary issues such  
28 as liability,” since the district court could then stay discovery as to HSBC's financial condition or net worth. (HSBC's  
Mem. Supp. Mot. at 3.)

1 concedes that it sold the loan to PMC at a discount, and thus argues that the financial information  
2 is irrelevant to prove this undisputed fact. HSBC contends that the Plaintiffs have failed to  
3 explain how the requested financial information is relevant to prove HSBC acted in bad faith by  
4 selling the Loan at less than face value.

5 While federal courts have ordered that liability and damages be tried separately in a  
6 variety of litigation, bifurcation "has been denied when the evidence on the two subjects is  
7 overlapping or the liability and damages issues are so intertwined that efficiency will not be  
8 achieved or confusion may result from any attempt at separation." 9 Wright & Miller, Federal  
9 Practice and Procedure, § 2390 (2d ed. 1995) and cases cited in footnote 3. Here, it would  
10 appear that the evidence relating to the liability and punitive damages issues are inextricably  
11 intertwined such that bifurcation of the issues would not be warranted. HSBC, like other banks,  
12 is in the business to make money. Yet, HSBC concedes that it sold the Plaintiffs' Loan to PMC  
13 for a price that was less than half the balance of the Loan. The Plaintiffs' claims of bad faith and  
14 breach of the work out agreement are premised on the fact HSBC had no financially or  
15 economically valid reason for refusing to allow the Plaintiffs a reasonable time to sell their  
16 properties or to obtain alternate financing. HSBC's financial viability is an integral part of the  
17 Plaintiffs' claims, and the evidence needed to show liability will also be needed to determine  
18 punitive damages. Because there is this overlap of evidence, efficiency would not be achieved  
19 by bifurcation, and, as noted by the Plaintiffs, confusion may result from an attempt to separate  
20 and redact the evidence accordingly.

21 Additionally, the Court notes that HSBC is not seeking to completely bifurcate the issues  
22 of liability and damages. Instead, HSBC seeks to only sever one type of damages recovery from  
23 the first phase of the trial. Thus, the jury will hear evidence regarding the Plaintiffs' claimed  
24 compensatory damages under the scheme proposed by HSBC. Singling out the amount of  
25 punitive damages for the second phase of trial would unnecessarily lengthen the trial process; it  
26 would not result in judicial economy.


27 Finally, HSBC will not be severely prejudiced by the presentation of evidence of its  
28 financial condition during the liability phase of the trial. Most people recognize that HSBC is an

1 international bank with branches throughout the world. As such, people expect HSBC to have  
2 large assets. Nevertheless, the Court believes that the voir dire process can eliminate those  
3 potential jurors who can not be fair and impartial because of such information. Furthermore, any  
4 prejudice HSBC may face can be cured by the Court giving appropriate jury instructions.

5 **CONCLUSION**

6 For the reasons set forth above, the Court hereby DENIES HSBC's Motion to Bifurcate  
7 Trial.

8 SO ORDERED this 5<sup>th</sup> day of October, 2004.

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10   
11 JOAQUIN V. E. MANIBUSAN, JR.  
12 U.S. Magistrate Judge

13 Notice is hereby given that this document was  
14 entered on the docket on 10/5/04.  
15 No separate notice of entry on the docket will  
16 be issued by this Court.

17 Mary L. M. Moran  
18 Clerk, District Court of Guam

19 By:  10/5/04  
20 Deputy Clerk Date